REMARKS

This communication is filed in response to the Final Office Action. Claims 6-13 are amended merely to add a "non-transitory" element. No claims are canceled. No claims are added. Therefore, claims 1-9, 11-21, 23-25, and 27-31 remain pending in this application.

Objection to the Specification

The Examiner objected to the specification because "the specification must provide support for claim amendments as described in regards to rejections under 35 USC § 101 in order to maintain proper antecedent basis for the claims."[1] According to instructions issued by the U.S. Patent and Trademark Office (USPTO), "[a] claim drawn to such a computer readable medium . . . may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation 'non-transitory' to the claim."[2] The USPTO has instructed that, "*[s]uch an amendment would typically not raise the issue of new matter.*"[3] As described below, Applicant has hereby amended claims 6-13 to include the "non-transitory" element. The addition of the "non-transitory" element is supported by, at least, paragraph [0026] of Applicant's as-filed specification.[4] Therefore, Applicants respectfully request that the Examiner withdraws the objection to the specification.

Rejection of the Claims Under 35 U.S.C. § 101

The Examiner rejected claims 6-13 are under 35 U.S.C. § 101 "because the claimed invention is directed to non-statutory subject matter."[5] In particular, the Examiner asserted that the "computer readable storage medium" recited in claims 6-13 "is interpreted to include non-statutory subject matter such as carrier waves, signals, and communication media because carrier waves, signals, and communication media store data within the wave, signal or media."[6]

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[1] Final Office Action at 3.
[2] USPTO Notice, "Subject Matter Eligibility of Computer Readable Media," issued January 26, 2010.
[3] *Ibid.*
[4] See Applicant's as-filed specification at [0026], which states "[f]or example, the present invention may be downloaded as a computer program which may be transferred from a remote computer (e.g., a server) to a requesting computer (e.g., a client) by way of data signals embodied in a carrier wave or other propagation medium via a communication link (e.g., a modem or network connection)."
[5] Final Office Action at 2.
[6] *Id.* at 3 (emphasis added).

Applicants have hereby amended claims 6-13 to include the "non-transitory" element.
Therefore, the Examiner's rejection of claims 6-13 under 35 U.S.C. § 101 is moot and
Applicants respectfully request that the Examiner reconsiders and withdraws the rejection.

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Rejection of the Claims Under 35 U.S.C. § 103(a)

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The Examiner rejected claims 1-9, 11-21, 23-25, and 27-31 under 35 U.S.C. § 103(a) as
allegedly being unpatentable over U.S. Patent No. 6,954,757 B2 to Zargham et al. (hereinafter
"*Zargham*") in view of U.S. Patent No. 6,081,807 to Story et al. (hereinafter "*Story*") and further
in view of U.S. Patent No. 7,203,700 to Kumar et al. (hereinafter "*Kumar*").[7] *KSR v. Teleflex*
provides a tripartite test to evaluate obviousness.

> The rationale to support a conclusion that a claim would have been
> obvious is that *all the claimed elements were known* in the prior
> art and one skilled in the art could have combined the elements as
> claimed by known methods. *See KSR International Co. v. Teleflex
> Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007); *see also* MPEP
> § 2143, emphasis added.

"If *any* of these *[three] findings* cannot be made, then this rationale [of combining prior art
elements according to known methods to yield predictable results] cannot be used to support a
conclusion that the claim would have been obvious." MPEP § 2143 (emphasis added).

Independent claim 1 recites, in part,

> [O]ne or more of the plurality of instances to initiate registering or
> reregistering of instance-specific information with the message
> server upon starting or restarting, respectively, of the message
> server, the instance-specific information including a confirmation
> of a connection between the one or more of the plurality of
> instances and the message server.

The Examiner conceded that "[t]he modified Zargham [that is, *Zargham* in view of *Story*]
does not disclose this recitation.[8] However, in support of the assertion that *Kumar* discloses this

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[7] Final Office Action at 4. Note: the Examiner rejected claims 1-25, but Applicants assume the Examiner rejected
claims 1-9, 11-21, 23-25, and 27-31 based on Applicants' previous cancellations of claims 10, 22, and 26 and
additions of claims 27-31, and the Examiner's assertions on pages 23-26 of the Final Office Action that a
combination of references teaches the elements of claims 27-31.
[8] *Id.* at 5.

recitation, the Examiner cited to *Kumar* at col. 5, lines 1-15, col. 5 lines 16-27, and col. 6, lines

3-9.[9] The first portion of *Kumar* cited to by the Examiner states:

> In act 20 (FIG. 2) connectivity between the new instance J (FIG. 3)
> and at least one component in a network of computers is
> established, in any manner, depending on the embodiment. For
> example, client computers 48 and 49 (FIG. 3) may be informed of
> the new instance J so that processes therein can start sending work
> (as illustrated by the dashed lines) to the new instance. Thereafter,
> as illustrated by act 30 (FIG. 2), the new instance is started, for
> example by issuing an operating system instruction to the
> computer in which the instance J is to be started. As noted above,
> such a computer may be part of a cluster of computers in which all
> of the other instances are executing. Depending on the
> embodiment, all of the above-described instances may be
> executing in a single computer, or alternatively in computers
> connected to one another by a local area network or a wide area
> network.[10]

Thus, *Kumar* discusses establishing connectivity between "a new instance" and "at least

one component in a network of computers." However, although *Kumar* indicates that "client

computers . . . may be informed of the new instance,"[11] *Kumar* neither discloses that the new

instance is to "*initiate*" the informing nor that the informing includes "*registering or

reregistering instance-specific information*" with the one component (e.g., a message server) in

the network of computers. Furthermore, *Kumar* does not disclose that the new instance is to

initiate the informing "*upon starting or restarting*" of the one component. Therefore, *Kumar*

does not disclose "on or more of the plurality of application servers to initiate a registering or

reregistering of instance-specific information with the message server," as recited in independent

claim 1.

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[9] *Id.* at 6.
[10] *Kumar* at col. 5, lines 1-15.
[11] *Id.* at col. 5, lines 4-5.

The second portion of *Kumar* cited to by the Examiner states:

> Automatic addition of a new instance to a group of existing instances as described above in reference to FIG. 2 provides several advantages. Specifically, depending on the embodiment, manual effort in adding a new instance is reduced or even eliminated. Moreover, human errors in a manual process are also reduced or eliminated, thereby to facilitate guaranteed 24x7 uptime. Furthermore, it is no longer necessary to bring down all of the instances of an application, because a new instance can be automatically added on the fly, namely while the other instances are continuing execution.[12]

Thus, *Kumar* discusses an "automatic addition of a new instance to a group of existing instances." However, although *Kumar* discusses the "automatic addition" of a new instance, *Kumar* neither discloses that the new instance is to *"initiate"* the automatic addition nor that the automatic addition includes ***"registering or reregistering instance-specific information"*** with a component (e.g., a message server) of the group. Furthermore, *Kumar* does not disclose that the new instance is to initiate the automatic addition ***"upon starting or restarting"*** of the component. Therefore, *Kumar* does not disclose "one of the plurality of application servers to initiate a registering or reregistering of instance-specific information with the message server," as recited in independent claim 1.

The third portion of *Kumar* cited to by the Examiner states:

> Next, in act 53, the starter computer automatically checks that the network has connectivity to the newbie computer, e.g. confirms that one or more processes that implement connectivity to the newbie computer to other processes in other computers of the network are up and running, and are responsive to messages being sent to the newbie computer from the network.[13]

Thus, *Kumar* discusses checking whether "the network has connectivity to [a] newbie computer." However, *Kumar* does not discuss that any element (e.g., the start computer, the network, or the newbie computer) is to *"initiate"* any action in response to the checking, much less *"a registering of instance-specific information"* with any other element. Furthermore, *Kumar* does not disclose that any element is initiate an action *"upon a starting or restarting"* of any other element (e.g., a message server). Therefore, *Kumar* does not disclose "one of the

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[12] *Id.* at col. 5, lines 16-27.
[13] *Id.* at col. 6, lines 3-9.

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plurality of application servers to initiate a registering or reregistering of instance-specific information with the message server," as recited in independent claim 1.

As the references cited by the Examiner neither teach nor suggest the claim elements discussed above, no combination of the references can provide these claim elements. It is therefore submitted that independent claims 1 is non-obvious under the guidance of *KSR*. Independent claims 6, 14, and 18 recite claims limitations similar or analogous to those discussed above with respect to claim 1, and it is thus submitted that these claims are also non-obvious. In addition, any claim depending from a non-obvious independent claim is also non-obvious.[14] Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-9, 11-21, 22-25, and 27-31 under 35 U.S.C. § 103(a).

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[14] *See* MPEP § 2143.03.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2016 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the
USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450 on this 10th day of May. 2010.

Dawn R. Shaw
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Name   Signature